

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
TERRY L. PFEIFFER)
)
Licensee of Industrial/Business Private Land)
Mobile Radio Station WPHW301, Malone, New)
York)

ORDER OF MODIFICATION

Adopted: December 17, 2004

Released: December 21, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order of Modification*, we modify the license of Terry L. Pfeiffer (Pfeiffer) for Industrial/Business Pool Station WPHW301, Malone, New York, by deleting frequency 152.870 MHz. As explained in further detail below, we take this action pursuant to an earlier *Memorandum Opinion and Order (MO&O)* proposing to modify Pfeiffer's license.¹

2. *Background.* On September 10, 2003, a representative of Industry Canada informed the Licensing and Technical Analysis Branch (Branch) of the former Public Safety and Private Wireless Division² that several stations in Ontario licensed to Union Gas were receiving harmful interference to their communications on frequency 152.870 MHz, and that Industry Canada had pinpointed the source of the interference to a U.S. station located near Malone, New York transmitting on frequency 152.870 MHz.³ Based on the information supplied by Industry Canada, agents from the Commission's Enforcement Bureau performed an inspection of Station WPHW301, which verified that Pfeiffer's station was the source of the interference to Union Gas's operations. In coordination with the Branch, Pfeiffer modified the Pfeiffer system in an effort to eliminate the interference, but Industry Canada reported that Union Gas continued to suffer harmful interference from Station WPHW301. Therefore, in the *MO&O*, we concluded that Pfeiffer's operation on frequency 152.870 MHz was contrary to the public interest, and

¹ See Terry L. Pfeiffer, *Memorandum Opinion and Order*, 19 FCC Rcd 7607 (WTB PSCID 2004) (*MO&O*). The instant *Order on Modification* supercedes a prior *Order of Modification* in this proceeding that modified Pfeiffer's license on the grounds that Pfeiffer did not assert any objection to the *MO&O*. See Terry L. Pfeiffer, *Order of Modification*, 19 FCC Rcd 12073 (WTB PSCID 2004). It now appears, however, that Pfeiffer may not have received proper notice of the *MO&O*. Consequently, this *Order of Modification* addresses the objections that Pfeiffer asserted in response to the prior *Order of Modification*.

² The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

³ See E-mail dated Sept. 10, 2003 from Pierre Gaudreau, Industry Canada, to Tracy Simmons. The harmful interference was being experienced by mobile units associated with the following Union Gas stations: Station VAJ579, Morrisburg, Ontario; Station VEK839, Bunker Hill, Ontario; Station VEK855, Cornwall, Ontario; Station XNG529, Cornwall, Ontario; and Station XNG530, South Mountain, Ontario. *Id.*

should cease in order to prevent interference to Union Gas.⁴ As a result, we proposed to modify Pfeiffer's license pursuant to Section 316 of the Communications Act of 1934, as amended,⁵ by removing frequency 152.870 MHz.

3. *Discussion.* In response, Pfeiffer states that Station WPWH301, which was licensed on November 15, 2002, operated without incident from December 2002 until the Branch received the complaint from Industry Canada in September 2003.⁶ Pfeiffer further asserts that the contact person in Canada identified by the Branch did not indicate to Pfeiffer that Union Gas was currently experiencing interference from Pfeiffer's operations, but instead stated that Union Gas wanted to expand its existing system, and believed that Station WPWH301 would cause interference to the expanded system.⁷ Pfeiffer also states that Industry Canada's field strength measurements were taken at the United States-Canada border, rather than at Union Gas's licensed sites.⁸ Pfeiffer argues that the facts do not support the conclusion in the *MO&O* that Union Gas was receiving harmful interference.

4. Pfeiffer notes that three major utilities (Reliant Energy, St. Lawrence Gas, and Time Warner) are among the users of Station WPWH301, so, she argues, the Pfeiffer station serves the public interest as much as the Union Gas stations.⁹ She asserts that deleting a channel from her authorization for Station WPWH301 would result in severe overcrowding to the detriment of these users.¹⁰ Pfeiffer states that the loss of the channel would be particularly burdensome because frequency 152.870 MHz is Station WPWH301's control channel, so deleting this frequency would necessitate manual reprogramming of more than one thousand mobile units.¹¹ She therefore contests the conclusion in the *MO&O* that Pfeiffer's operation on frequency 152.870 MHz is contrary to the public interest.

5. We nonetheless conclude that it is appropriate to modify Pfeiffer's license to delete frequency 152.870 MHz. Pursuant to a bilateral agreement between the United States and Canada, U.S. stations above Line A¹² in the border area are entitled to protection from cross-border stations only if the application for the station was coordinated with the other country.¹³ As noted in the *MO&O*, the Union Gas stations were coordinated with the United States, but Station WPWH301's operations on frequency

⁴ *MO&O*, 19 FCC Rcd at 7608-09 ¶¶ 5-7.

⁵ 47 U.S.C. § 316.

⁶ See Supplement to Petition for Reconsideration at 2.

⁷ See *id.*

⁸ See *id.* at 2-3.

⁹ See *id.* at 2, 7.

¹⁰ See *id.* at 7.

¹¹ See *id.*

¹² See 47 C.F.R. § 2.1.

¹³ See Exchange of Notes (October 24, 1962) Between the Government of Canada and the Government of the United States of America Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles Per Second, Technical Annex, ¶ 4(a), (b) (revised June 16, 1965) (U.S.-Canada Agreement).

152.870 MHz were not coordinated with Canada.¹⁴ Therefore, the international agreement dictates that Station WPHW301's operations on frequency 152.870 MHz are secondary to any coordinated Canadian operations, such as those of Union Gas.¹⁵ If interference will be caused to a station entitled to protection, the interfering operations must be halted.¹⁶ Consequently, we affirm that it is in the public interest to modify Pfeiffer's license by deleting frequency 152.870 MHz.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Service Station WPHW301, Malone, New York held by Terry L. Pfeiffer, BE MODIFIED by deleting frequency 152.870 MHz.

7. IT IS FURTHER ORDERED that this *Order of Modification* shall be sent by certified mail, return receipt requested, to Terry L. Pfeiffer, 6350 Bills Rd, Naples, NY 14512-9738.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁴ See *MO&O*, 19 FCC Rcd at 7608 ¶ 5 & n.9. The U.S.-Canada Agreement allows stations to operate in the border area at a maximum of five watts effective radiated power without coordination. See U.S.-Canada Agreement at ¶ 4(a), (b).

¹⁵ See *Pend Oreille County, Washington Department of Emergency Management, Order on Reconsideration*, 16 FCC Rcd 5293, 5295 n.18 (WTB PSPWD 2001); Jan David Jubon, P.E., *Order on Reconsideration*, 16 FCC Rcd 213, 215 ¶ 7 (WTB PSPWD 2001).

¹⁶ See U.S.-Canada Agreement at ¶ 5.